

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT**

**6221 Box Springs Boulevard
Riverside, California 92507-0714**

**Decision Record
and
Finding of No Significant Impact**

for

**Temporary Restriction of Motorized Vehicles to Specific Routes in Two Areas of Critical
Desert Tortoise Habitat in Eastern San Bernardino, Riverside, and Imperial Counties,
California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT
Needles Field Office
Palm Springs-South Coast Field Office
El Centro Field Office**

Environmental Assessment CA-660-01-30

Approved by _____
Tim Salt, District Manager
California Desert District

Date

DECISION

Based on review of Environmental Assessment CA-660-01-30 (EA) and my Finding of No Significant Impacts, and consideration of the 47 public comment letters submitted on the EA, my decision is to approve the temporary restriction of vehicle use to specific routes of travel in two areas totaling approximately 415,000 acres of desert tortoise habitat in two areas located in eastern San Bernardino, Riverside, and Imperial Counties and as described in the EA and shown on the attached maps. The area to be closed totals approximately 415,000 acres of public land managed by the Bureau of Land Management (BLM) is within the California Desert Conservation Area (CDCA).

Specifically, the only routes available for motorized-vehicle use in the two areas, Units 1 and 2, were identified in the EA and delineated on the attached maps for Unit 1 and 2. Routes of travel that form the boundaries of Units 1 and 2 are also available for motorized vehicle use. Navigable washes characterized as “existing” routes in accordance with the CDCA Plan, but not identified as specific routes on the attached maps, are not available for motorized-vehicle use in Units 1 and 2. These routes would be temporarily closed to motorized-vehicles.

Implementation of the temporary restriction is limited to the installation of “No Motor Vehicles” signs in washes within Units 1 and 2, except for wash routes specifically identified on the attached maps, that exhibit evidence of recent motorized-vehicle use and/or possess sufficient characteristics of “navigability” in the context of motorized-vehicle access such that future vehicle use could be anticipated. A wash that, by its physical nature (width, soil, slope, topography, vegetative cover, etc.), permits the passage of motorized vehicles is considered “navigable.” In addition, two brochures will be developed (one for each of the units). Each brochure would include the rationale for the action and maps showing unit boundaries and routes available for use.

I have determined to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to temporarily close identified routes for vehicle use in the identified areas in order for the Bureau of Land Management (BLM) to provide additional protection of threaten and endangered species under the Endangered Species Act (ESA). This restriction will take effect immediately and remain in effect until a record of decision is signed for the Northern and Eastern Colorado Desert Coordinated Management (NECO) Plan, which is expected to be signed in September 2002. This restriction does not apply to private lands within the two areas. Exceptions to the vehicle closures include BLM operation and maintenance, law enforcement and fire response, and other emergency vehicles.

RATIONALE

This decision is necessary because the desert tortoise populations throughout the California Desert have been reduced considerably over the last several years as a result of a variety of causes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise population of the CDCA and the need for affirmative actions to protect and stabilize the remaining population (Blincoe, et al.v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04,

CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.20 et seq). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the ESA. By taking this interim closure action, BLM will provide additional protection for the threatened desert tortoise and its habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the NECO Plan as noted above.

BLM recognizes that the interim closure will displace some off-highway vehicle (OHV) users who utilized the area to get away from the crowds, hunt, trail ride and recreate. However, the closure will not have a significant negative impact on recreation or hunting since the closure is temporary and other areas are available in the general vicinity and can accommodate the displaced users.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when he determines that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of a record of decision on the NECO Plan is not anticipated until the fall of 2002, BLM concludes immediate closure under 43 CFR 8341.2 (a) is necessary. There is a considerable body of literature that indicates that OHV use and related recreational activities can have adverse impacts upon the tortoise (references cited at the end of this document).

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation regarding these route closures.

Although precipitated by the Center's lawsuit, BLM has initially reviewed its current management for vehicle use in washes in the NECO planning area under the CDCA Plan as it relates to desert tortoise. As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending implementation of the yet to be completed NECO Plan. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7(d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation on January 31, 2001 with the FWS on the CDCA Plan, as amended and as proposed to be amended in the NECO planning area. A biological opinion is expected later this year. BLM initiated consultation on this interim closure on May 16, 2001. FWS issued a letter of positive concurrence on July 3 (Carlsbad Field Office) and September 12 (Ventura Field Office), 2001. In addition, BLM will consult on the NECO Plan prior to issuing Record of Decision.

The interim closure of this area is consistent with the CDCA Plan, 1980, as amended. The CDCA Plan contains general and specific direction for protection listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

PUBLIC INVOLVEMENT

On June 15, 2001, a notice of the proposed order to temporarily restrict motorized-vehicle access as described in CA-660-01-30 was published in the Federal Register (66 FR 32639-32640). On the same day, BLM issued a news release regarding the proposed order. On June 19, 2001, BLM distributed the EA for comment to a wide range of interested parties identified through a mailing list maintained at the BLM's California Desert District Office. The public comment period ended July 9, 2001.

Forty-seven comment letters postmarked or transmitted via electronic mail to BLM on or before July 9, 2001, were received. A summary of the comments and BLM's response to those comments follows:

Comment: *There is no way to enjoy the wonders of the desert without getting there by motorized vehicle. Closing the desert to motorized vehicles is to cheat the American public from enjoying their public lands.*

Response: BLM recognizes the need for motorized-vehicle access to enjoy the various resources in the California Desert Conservation Area. BLM recognizes that the interim closure will displace some off-highway vehicle (OHV) users who utilized the area to get away from the crowds, hunt, trail ride and recreate. However, the closure will not have a significant negative impact on recreation or hunting since the closure is temporary and other areas are available in the general vicinity and can accommodate the displaced users.

Comment: *This area is lightly used in comparison to other areas inhabited by tortoises. Time and taxpayer dollars could be better directed to other areas with greater effect.*

Response: BLM acknowledges that motorized-vehicle use of the area affected by the proposed action is low, but use of washes by OHVs have resulted in tortoise mortality and crushing of tortoise burrows to some extent. This action is in keeping with BLM's responsibilities to balance resource use and resource protection while meeting regulatory and legal requirements. Implementation of this action will be limited to installation of signs in navigable washes not specifically identified on the map of existing routes, as well as development of two brochures therefore, a minimum of funds will be expended.

Comment: *The government's opening and closing the public lands as it selects contradicts the premise that the land belongs to the people. The proposed road closures are unacceptable in light of the freedoms that are being taken away from people: freedom to escape the constraints of human construction, stress from work and traffic, poor air, loud noise, and light pollution.*

Response: BLM recognizes that the interim closure will displace some off-highway vehicle (OHV) users who utilized the area to get away from the crowds, hunt, trail ride and recreate. However, the closure will not have a significant negative impact on recreation or hunting since the closure is temporary and other areas are available in the general vicinity and can accommodate the displaced users.

Comment: *A policy of everything being closed except when signed open, instead of being open except when signed closed, is opposed.*

Response: BLM signs some open routes. BLM's policy of signing all closed routes is based on a manageability and aesthetics criteria. Closed sign are often important in successful citing and prosecuting violators.

Comment: *Blocking routes to private property is a confiscation of that property, will render useless the plans for its development, and will cause its value to decline.*

Response: BLM does not restrict access to private property. If additional access is required to private property, BLM will work with private landowners to provide access in conformance with existing laws and regulations.

Comment: *People using established dirt roads have a long-standing historic right of way in using them.*

Response: Historic use of dirt roads on public lands does not, in itself, establish a right of use.

Comment: *The physically disadvantaged, because of age or infirmity, would be excluded and this violates the American Disabilities Act.*

Response: No primary destinations or locations are block. BLM recognizes that the interim closure will displace some off-highway vehicle (OHV) users who utilized the area to get away from the crowds, hunt, trail ride and recreate. However, the closure will not have a significant negative impact on recreation or hunting since the closure is temporary and other areas are available in the general vicinity and can accommodate the displaced users.

Comment: *Closing roads precludes opportunities for children, parents, students and teachers to learn, demonstrate, and encourage the importance of protecting the public lands. Upon closing roads, fewer appreciative people are out there protecting and cleaning up the environment.*

Response: The network of routes that will continue to be available for motorized-vehicle access in accordance with this decision does not preclude opportunities for individuals to access public lands for recreational and educational purposes.

Comment: *A better alternative to control and protect the environment includes (1) allowing current economic conditions to reduce the number of people on open roads, (2) advertising the*

importance of protecting wildlife and establishing signs that indicate seasonal use of an area, and (3) creating a fee permit system as has been done in the local forest areas.

Response: This is an interim measure and long-term decisions regarding management of public lands in the NECO planning area will be made through the NECO Plan and record of decision expected to be signed by September 2002. This process is conducted with public involvement.

Comment: *The EA fails to address the weather and how it affects the desert environment because preparers of the EA know that weather, more than anything else, affects the survival of all species and depend upon the ignorance of the public not knowing any difference. By ignoring weather conditions and patterns, the preparers of the EA do not have to explain the natural laws that affect all species because it is impossible for them or anyone else to do so.*

Response: Weather is a factor that effects the desert environment. However, other physical and biological factors also effect the desert environment also. BLM is required to analyze direct, indirect, and cumulative impacts on the affected environment to the extent necessary to determine if impacts are significant.

Comment: *BLM has failed to adequately seek public input by failing to publicize data and hearings information outside the State of California. Most of the regular visitors and non-resident users of the eastern portion of the study area are not residents of California, but are residents of Arizona or Nevada, or are tourists vacationing along the Colorado River. It is suggested that future public hearings for the area near the Colorado River be much better publicized and over a wider area.*

Response: BLM issued a Federal Register Notice, a news release, and distributed the EA to a wide range of interested parties throughout southern California, including those who live in communities along the Colorado River to solicit comments on the proposed action. BLM also has the flexibility to determine length of discretionary comment periods to facilitate public involvement within necessary time constraints. BLM did not convene any hearings, but the public was afforded the opportunity to comment on the proposed action.

Comment: *Comments questioned BLM's authority and whether BLM followed the appropriate processes: (1) a two-week public comment period is insufficient; (2) BLM has no closure authority under 43 CFR §8364.1 or under the Federal Land Policy and Management Act of 1976 (43 U.S.C. §1781(d)); (3) BLM is making or extending withdrawals; (4) BLM is making decisions that only the Secretary of the Interior can make; (5) BLM cannot close areas or trails to OHV use that were previously designated open; (6) BLM cannot close areas or trails outside critical habitat; (7) the closure is not premised on a recovery plan; (8) the closure is significant and requires an EIS; and (9) BLM is not complying with the Regulatory Flexibility Act and should conduct the process through proposed regulations and guidelines involving hearings.*

Response: BLM has the necessary legal and regulatory authority to make the decisions as well as the policy flexibility to determine length of discretionary comment periods to facilitate public involvement within necessary time constraints. Most important, these interim restrictions are temporary in nature and long-term decisions regarding management of public lands in the NECO planning area will be made through the NECO Plan amendment and record of decision expected

to signed by September 2002 with full public involvement. Finally, the interim closures are being authorized under 43 CFR Subpart 8341, not Subpart 8364 as indicated in the EA.

Comment: *The EA is sorely lacking in specifics and should be redone to assure compliance with NEPA. The EA should provide specific information for analysis as to what routes will be closed.*

Response: BLM feels that it has adequately examined specific information in the EA. Regarding specific information as to what routes would be closed, only navigable washes not identified as specific routes would be affected. In the California Desert, washes are frequently used for motorized-vehicle access. Given the extent of washes accessible by motorized vehicles and meeting the definition of an “existing route” in accordance with the CDCA Plan, the task of identifying individual wash routes for inclusion in the NECO Plan route inventory was considered unreasonable to undertake. Consequently, washes are addressed in terms of “wash zones.” Therefore, the washes closed to motorized-vehicle use by this decision are not individually identified, rather they are closed *as a class*.

Comment: *The EA appears to simply be a formality to implement the negotiated settlement in the matter of the Center for Biological Diversity lawsuit, and as such serves only to implement decisions to which the public was not a party. Implementation of settlement stipulations such as this, in essence, implement decisions associated with a plan (NECO Plan) that is still being circulated for comment.*

Response: The lawsuit is a factor in the decision. These interim closures are temporary and the long-term decisions on the management of these routes are being addressed in the Draft Environmental Impact Statement NECO Plan, available for public review since March 2001. These temporary closures are necessary to protect the desert tortoise and its habitat from potential OHV-related impacts. The desert tortoise was listed as threatened in 1990, and populations have declined dramatically throughout southern California during the past eleven years.

Comment: *While the EA characterizes the closures as “temporary,” it is known from practice that such temporary closures become difficult to re-open once instituted, particularly if BLM invests in and installs barriers or other means to enforce such closures.*

Response: The restriction of vehicles as proposed is a temporary measure, pending completion of the NECO Plan amendment anticipated in September 2002. Long-term decisions on management of public lands in the NECO planning area will be made through this plan. Further, this decision provides reasonable access to the subject areas—impacts to traditional motorized-vehicle access are minimal. Whether or not BLM opens or closes routes is not dependent upon installation of barriers or signs.

Comment: *The proposed restrictions may potentially conflict with maintenance operations for a pipeline facility approved on public lands by BLM. Urgent utility work should be exempt from the restrictions.*

Response: Exceptions to the vehicle restriction include vehicles involved in authorized actions, such as urgent maintenance work on pipelines authorized under a right-of-way grant.

Comment: *The proposed action does not reflect any serious effort to reach consensus among interested members of the public.*

Response: This action is temporary in nature and addresses immediate management needs. The final determination regarding route designations will occur through the NECO Plan. The NECO Plan has a long history of public involvement and consensus building which will continue throughout the completion of the plan.

Comment: *The proposed action must identify a specific monitoring plan to ascertain impacts and effectiveness of the closure, including thresholds at which actions may be altered or changed in the future.*

Response: Generally, monitoring programs are developed to ascertain long-term changes, especially for species such as the desert tortoise whose individual life spans can encompass many decades. The appropriate venue for discussion of long-term monitoring of special status species in the subject area is the NECO Plan.

Comment: *The problem of concentrating human impacts, particularly OHV impacts, on a few locations is greater than acknowledged.*

Response: BLM recognizes the popularity of OHV recreation use within the California Desert. The proposed decision was designed to minimize impacts to the most popular areas while still providing the necessary protections for the desert tortoise to meet ESA requirements.

Comment: *The proposal needs to make finer distinctions between the many kinds of mechanized human uses that may occur, the extent of environmental impact from each use, and how these users are addressed—some uses are simply far more benevolent than others. The choice is not the one implied between “quiet solitude and an unaffected natural environment” [quote provided by the respondent] and horrible OHV impacts.*

Response: The respondent quotes a phrase that is not contained in EA number CA-660-01-30. The restriction of vehicles as proposed is a temporary measure, pending completion of the NECO Plan amendment anticipated in September 2002. As stated before, long-term decisions on management of public lands in the NECO planning area will be made through this plan. Further, the proposed action provides reasonable access to the subject areas—impacts to traditional motorized-vehicle access are minimal.

Comment: Flexibility should be maintained. Instead of permanent closures, BLM should maintain the option to rotate closures/openings in various parts of the area for various types of use to reduce overall impact and still provide opportunity for traditional access.

Response: The restriction of vehicles as proposed is a temporary measure, pending completion of the NECO Plan amendment anticipated in September 2002. As stated before, long-term decisions on management of public lands in the NECO planning area will be made through this plan. Further, the proposed action provides reasonable access to the subject areas—impacts to traditional motorized-vehicle access are minimal.

APPEALS

This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4. If an appeal is taken, your notice of appeal must be filed in writing with this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. You may file your statement of reasons with your appeal.

Within 30 days after filing your notice of appeal, you must file a complete statement of the reasons why you are appealing. This must be filed with the U.S. Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR §4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR §4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

FINDING OF NO SIGNIFICANT IMPACT

I have reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. I have concluded that the proposed action is not a major federal action and will result in no significant impacts on the human environment under the criteria at Title 40 CFR §1508.18 and §1508.27. Preparation of an Environmental Impact Statement to further analyze possible impacts is not required pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969. I have determined that the proposed project is in conformance with the approved land use plan.

/s/ _____
Tim Salt, District Manager
California Desert

Date

REFERENCES

The following references have been considered in making this decision:

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- Federal Register Vol 55, No. 63 pp. 12178-12190, Regular Rule-Making Listing as Threatened, April 2, 1990.
- Federal Register Vol 59, No. 26 pp. 5820-5866, Critical Habitat Final Rule, February 8, 1994.
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